

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION  
4                   -   -   -  
5

6           IN RE:    NATIONAL                   :   HON. DAN A.  
7           PRESCRIPTION OPIATE           :   POLSTER  
8           LITIGATION                   :     
9   :     
10          APPLIES TO ALL CASES           :   NO.  
11   :   1:17-MD-2804  
12   :     
13   :   

14                   - HIGHLY CONFIDENTIAL -  
15

16          SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
17  
18                   -   -   -  
19

20                   February 22, 2019  
21                   -   -   -  
22

23                   Videotaped deposition of  
24           PATRICK FOURTEAU, taken pursuant to  
notice, was held at the offices of  
Patterson Belknap, LLP, 1133 Avenue of  
the Americas, New York, New York,  
beginning at 8:41 a.m., on the above  
date, before Michelle L. Gray, a  
Registered Professional Reporter,  
Certified Shorthand Reporter, Certified  
Realtime Reporter, and Notary Public.

                 -   -   -

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1 A. No.

2 Q. That had all been done  
3 before you arrived at Insys?

4 A. Yeah.

5 Q. Do you have any knowledge as  
6 to who would have been involved with  
7 that, with Dr. Kapoor?

8 A. There was a -- I understand  
9 that there was a gentleman by the name of  
10 Kottayil, George Kottayil that was --  
11 Kottayil, K-O-T-T-A-Y-I-L. I understand  
12 that the gentleman worked at Insys and  
13 was party to the development of the  
14 product.

15 Q. But it's your understanding  
16 that Dr. Kapoor had the initial idea for  
17 this product, correct?

18 A. Correct.

19 Q. And that was something that  
20 he had developed based upon some  
21 experience he had at Sciele?

22 A. I think the genesis of the  
23 product is the passing away of his wife.  
24 That was the genesis behind it, where I

1 think he struggled mightily dealing with  
2 her passing away. And the notion of --  
3 he put together the pain relief idea and  
4 the fast relief of NSAID that is so that  
5 he said why don't we put those two things  
6 together. That is my understanding of  
7 how this product came to be.

8 Q. But the sublingual delivery  
9 system, that's something that he would  
10 have had specific experience at Sciele  
11 with, correct?

12 A. Can you explain what you  
13 mean by experience in that case?

14 Q. He would have become aware  
15 of that as a possible delivery mechanism  
16 at Sciele, correct?

17 A. Yes.

18 Q. And I think you already  
19 testified that while at Sciele, you  
20 didn't discuss any -- any sort of opioid  
21 medications that would have a rapid onset  
22 of delivery, correct?

23 A. Correct.

24 Q. All right. From the time

1 A. No.

2 Q. So commercial meetings would  
3 obviously have to do only with the  
4 commercially marketed products, like  
5 Subsys, right?

6 A. Exactly.

7 Q. So, you were asked by  
8 Dr. Kapoor in late 2012 to attend these  
9 weekly meetings?

10 A. To call in on to those  
11 weekly meetings.

12 Q. Okay. On what day of the  
13 week did they occur?

14 A. On Fridays.

15 Q. Were you provided with  
16 information prior to those meetings?

17 A. Yes.

18 Q. What type of information?

19 A. It was a sales op with  
20 summary of the week.

21 Q. So those weekly meetings  
22 would occur, and the weekly numbers would  
23 be gone over during those meetings?

24 A. Yes.

1 Q. And you said that you were  
2 asked, based upon your experience to join  
3 those meetings. What did you mean by  
4 that?

5 A. John wanted another pair of  
6 ears on those meetings, if there was were  
7 things that I would pick up that did not  
8 seem right or if I would have a  
9 recommendation that I would make to him  
10 after those calls.

11 Q. Obviously it follows that a  
12 commercial meeting has to do with  
13 commercial issues, right?

14 A. Right.

15 Q. That involves marketing,  
16 correct?

17 A. Correct.

18 Q. And you have a background in  
19 marketing, correct?

20 A. Correct.

21 MR. HATCH: Objection to  
22 form.

23 BY MR. SCHNIEDERS:

24 Q. And that's part of the



1     limited in terms of the product that we  
2     were promoting at Sciele because of the  
3     competitiveness of the environment and  
4     the small size of our company. But that  
5     was the -- the rationale behind the  
6     approach that we did.

7             Q.     So in Sciele, the base  
8     salary for sales representatives was  
9     lower than what was typical within the  
10    industry, correct?

11            A.     Yeah, yeah.

12            Q.     And the bonus structure was  
13    potentially more lucrative than what  
14    might have been capped at some of the  
15    larger companies, correct?

16            A.     Yes.

17            Q.     And that model was employed  
18    at Insys, correct?

19            A.     That model was employed at  
20    Insys, yes.

21            Q.     Who decided to employ that  
22    model at Insys?

23            A.     It was decided by John  
24    Kapoor.

1       how the financing was arrived at?

2               A.       Yes.

3               Q.       Okay. Did you know that  
4       when you spoke to Dr. Kapoor --

5               A.       Yes.

6               Q.       And you're -- let's make  
7       sure we are not talking -- let me get my  
8       question out. Okay?

9                       Did you know that at the  
10       time that you spoke with Dr. Kapoor when  
11       he asked you to join the board?

12              A.       Yes.

13              Q.       Okay. So he told you that  
14       he had personally, through his assets,  
15       financed the company up to that point?

16              A.       Yes.

17              Q.       Did that cause you any pause  
18       in deciding to join?

19              A.       No.

20              Q.       It goes on to say, "These  
21       trusts are controlled by or are  
22       affiliated with our founder and executive  
23       chairman and principal stockholder,  
24       Dr. John N. Kapoor. As of March 31,

1 form.

2 THE WITNESS: Right.

3 BY MR. SCHNIEDERS:

4 Q. By products, we mean Subsys,  
5 correct?

6 A. Correct.

7 Q. Okay. If you would go to  
8 Bates number that ends in 0997 on Page  
9 120.

10 At the top of this page  
11 there is a list of the management,  
12 executive officers and directors.

13 Do you see that?

14 A. Yes.

15 Q. We've talked about  
16 Mr. Babich, who served as the president,  
17 CEO, and director, correct?

18 A. Correct.

19 Q. Mr. Babich at that time was  
20 only 36. Is that your recollection?

21 A. Yes.

22 Q. Did that cause you any pause  
23 having someone at the head of the company  
24 that was so young?

1           A.       The choice was a choice of  
2       John Kapoor at the time. He had  
3       worked -- Mike Babich had worked with  
4       John and was obviously very close to  
5       John. I did not feel that there was any  
6       reason to discuss his choice at the time.

7           Q.       Mr. Babich had worked for  
8       Dr. Kapoor in many positions, correct?

9           A.       Correct. And had worked at  
10      Insys since 2002, so knew intimately the  
11      product and the company.

12          Q.       Did, in your experience,  
13      Mr. Babich take his orders from  
14      Dr. Kapoor?

15                   MR. DONOHUE: Object to the  
16      form.

17                   THE WITNESS: Obviously in  
18      the past he was working directly  
19      for Dr. Kapoor and they had direct  
20      interaction.

21                   As a CEO, the perception was  
22      that indeed he still worked very  
23      closely with Dr. Kapoor, as the  
24      capital was based in Phoenix as

1     it, yes.

2                 Q.     And was it your experience  
3     that even if an e-mail to -- from his  
4     e-mail account was written by his  
5     assistant, that it was based upon  
6     consultation his assistant had had with  
7     Dr. Kapoor, correct?

8                 A.     Correct.

9                 Q.     So this e-mail that we're  
10    looking at in Exhibit 12, at the bottom  
11    it says, "Patrick, I would like to  
12    request if you could discuss with your  
13    compensation consultant what my  
14    compensation should be as executive  
15    chairman. I do spend a significant  
16    amount of time on Insys. Thanks, John."

17                       Do you see where I've read  
18    that from?

19                 A.     Yes.

20                 Q.     Who was your compensation  
21    consultant?

22                 A.     I could give you the name.  
23    I don't have it at the tip of my finger.  
24    But I -- I can give you the name. We

1       used an outside firm.

2               Q.       Okay. So there was a firm  
3       that you consulted with?

4               A.       Yeah. Yeah. Consulted  
5       with. We were always doing it on the  
6       basis, and it's attached to most of the  
7       minutes of the board meetings.

8               Q.       So -- so that group would  
9       have advised you on how executives should  
10      be compensated?

11              A.       Exactly. We were looking at  
12      that all -- every year trying to do that  
13      to make sure that we were always in the  
14      band of what we wanted to be, high --  
15      i.e., the plan was always low in base and  
16      higher in incentive. That was a model  
17      that was applied throughout the whole  
18      company.

19              Q.       Okay. So it wasn't just the  
20      sales force that had that model?

21              A.       No. The model was for  
22      everybody.

23              Q.       So going up from there. You  
24      write back and say, "John, I will talk to

1     our consultant today and will hope to get  
2     something shortly. Best."

3                     Do you see where I've read  
4     that from?

5             A.     Yes.

6             Q.     Do you recall this  
7     interaction at all?

8             A.     Yeah.

9             Q.     Okay. Tell me what you can  
10    recall about it.

11            A.     Nothing. That John asked me  
12    for a revision of his executive  
13    compensation, as executive chairman,  
14    which tended to make me chuckle knowing  
15    the wealth that he had, why was he  
16    looking at being compensated like that?

17            Q.     Do you recall how he was  
18    compensated?

19            A.     I don't recall the amount.  
20    I think there was a suggestion that it  
21    would figure into -- in the minutes that  
22    was provided by the comp committee.

23            Q.     Fair to say that Dr. Kapoor  
24    did spend a large amount of time

1       regarding Insys?

2               A.       Yeah.

3                       MR. DONOHUE:   Object to the  
4               form.

5       BY MR. SCHNIEDERS:

6               Q.       Do you have any sense of how  
7       often he was on site at Insys?

8               A.       No.

9               Q.       He lived in Phoenix,  
10       correct?

11              A.       He lived in Phoenix, but  
12       worked mainly out of his home office.

13                      (Document marked for  
14               identification as Exhibit  
15               Insys-Fourteau-13.)

16                      THE WITNESS:   Thank you.

17       BY MR. SCHNIEDERS:

18              Q.       Handing you Exhibit 13.  
19       Exhibit 13 is another e-mail about four  
20       days later after Exhibit 12.  It's from  
21       John Kapoor, again, through his  
22       assistant's e-mail address.  It says,  
23       "Patrick, I will call you to discuss."

24                      And then he says two things



1       2014 he wants to establish that, right?

2               A.       Okay, okay. That's what --

3               Q.       Is that fair?

4               A.       That's fair. That's totally  
5       fair.

6               Q.       So below, sales force  
7       expansion. It says, "First quarter,  
8       Dr. Kapoor wants the sales force expanded  
9       to 150," correct?

10              MR. DONOHUE: Objection to  
11       form.

12              THE WITNESS: That, that was  
13       his objective, yes.

14       BY MR. SCHNIEDERS:

15              Q.       And then to 175 in the  
16       second quarter, correct?

17              A.       Exact.

18              Q.       And then to 200 in the third  
19       quarter, right?

20              A.       Exact.

21              Q.       And also to go up to 20  
22       total reps in oncology, correct?

23              A.       Exact.

24              Q.       Okay. Do you recall the

1           need not prevent him to talk to  
2           people at Sciele that he had known  
3           prior to me joining. I had no  
4           problem with that.

5                       So that indeed is the same  
6           thing at Insys. It is very  
7           possible I never perceived it as a  
8           CEO, as, quote-unquote, you know,  
9           stepping in onto my bailiwick.

10                      I saw it as a team, our  
11           team, we were trying -- at Sciele  
12           I mean, we are a team trying to do  
13           that. That's the way I saw it at  
14           Sciele. And I assume it was the  
15           same approach that was taken at  
16           Insys.

17                      I did not know anything in  
18           particular about his relationship  
19           with Mike except that Mike and he  
20           had been working together for now  
21           12 years, 13 years.

22       BY MR. SCHNIEDERS:

23                      Q.       You would agree that Mike  
24           Babich was CEO of Insys because

1 Dr. Kapoor wanted him to be CEO, correct?

2 MR. DONOHUE: Object to the  
3 form.

4 THE WITNESS: Yes. Yes.

5 BY MR. SCHNIEDERS:

6 Q. And you would agree that if  
7 Dr. Kapoor decided that he didn't want  
8 Mike Babich to be CEO anymore, he  
9 wouldn't be CEO, correct?

10 MR. HATCH: Objection to  
11 form.

12 MR. DONOHUE: Same  
13 objections.

14 THE WITNESS: Correct.

15 BY MR. SCHNIEDERS:

16 Q. He served at the whim of  
17 Dr. Kapoor?

18 MR. HATCH: Objection to  
19 form.

20 MR. DONOHUE: Same  
21 objection.

22 THE WITNESS: Served at the  
23 whim of Dr. Kapoor, but he served  
24 the board. The whim of the board